UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

GLOBE INDUSTRIES LLC

Cases 25–CA–209034
25–CA–209055
25–CA–209095
25–CA–209100

and

INDIANA STATE PIPE TRADES ASSOCIATION AND U.A. LOCAL 502, AFL–CIO

Patricia McGruder, Esq., for the General Counsel.

James U. Smith, III, Esq. and *Oliver B. Rutherford, Esq. (Smith & Smith Attorneys),* of Louisville, Kentucky, for the Respondent.

Keith Bolek, Esq. and *Kathleen Bichner, Esq. (O'Donoghue & O'Donoghue, LLP),* of Washington, D.C., for the Charging Party.

DECISION

CHARLES J. MUHL, Administrative Law Judge. This case presents the question of whether Respondent Globe Industries LLC discharged three employees for their efforts to organize the company's fitters and welders. In June 2017, the Indiana State Pipe Trades Association learned of the Respondent's nonunionized operation in Pekin, Indiana. Thereafter, its representatives handbilled the facility to encourage employees to consider unionizing. From July to October, employees Nathan Adams, Ralph Davis, and Dale Robbins spoke to their coworkers about the benefits of joining the Union. Then on October 18, the three met with a Union representative, signed authorization cards to obtain an election, and immediately sought additional signed cards from other employees. Two days later, on October 20, the Respondent discharged Adams, allegedly due to poor attendance and work performance. On October 27, the Respondent discharged Davis and Robbins, allegedly for smoking marijuana at work and their refusals to be drug tested. As discussed fully herein, I conclude that the Respondent's discharges of Adams, Davis, and Robbins were unlawful.

STATEMENT OF THE CASE

On October 31, 2017, the Indiana State Pipe Trades Association and Local 440 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada ("U.A."), AFL–CIO, initiated this case by filing the original unfair labor practice charges in Cases 25–CA–209034, 25–CA–209055, 25–CA–209095, and 25–CA–209100 against Globe Industries LLC (the Respondent). On December 21, 2017, the U.A. and U.A. Local 502 (collectively, the Union or Charging Party) filed first amended charges against the Respondent in all four cases. On January 30, 2018, the General Counsel, through the Regional Director for Region 25 of the National Labor Relations Board (the Board), issued an order consolidating the four cases and a consolidated complaint against the Respondent. The complaint alleges the Respondent violated Section 8(a)(3) of the National Labor Relations Act (the Act) by discharging Nathan Adams on October 20, 2017, as well as discharging Ralph Davis and Dale Robbins on October 27, 2017. The consolidated complaint also alleges the Respondent violated Section 8(a)(1) on June 29, 2017, and in mid-to-late August 2017, by threatening employees with plant closure if they selected the Union as their collective-bargaining representative; on September 19, 2017, by informing job applicants that the Respondent does not hire union applicants; and on October 2, 2017, by interrogating job applicants about their union membership, activities, and sympathies. On February 9, 2018, the Respondent filed an answer to the complaint, denying the substantive allegations. On February 14, 2018, the Union filed a second amended charge in Case 25–CA–209034 and, on February 23, 2018, the General Counsel issued an amendment to the consolidated complaint. The amendment added an allegation that the Respondent violated Section 8(a)(3) on October 27, 2017, by requiring Ralph Davis and Dale Robbins to take a drug test. On February 28, 2018, the Respondent filed an answer, denying the additional allegation. From March 7 to 9, 2018, in Scottsburg, Indiana, I conducted a trial on the complaint. At the hearing, I granted, absent objection, the General Counsel's motion to amend the complaint to add the allegation that the Respondent further violated Section 8(a)(1) in October 2017, by again threatening employees with plant closure if they selected the Union as their bargaining representative. The Respondent denies that allegation as well. On April 20, 2018, the parties filed their posthearing briefs.

On the entire record and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. JURISDICTION

The Respondent is engaged in the business of industrial pipe fabrication from a facility located in Pekin, Indiana. In conducting its business operations during the past 12 calendar months, the Respondent purchased and received at its Pekin facility goods valued in excess of $50,000 directly from points outside the State of Indiana. Accordingly, and at all material times,

I find that the Respondent, as it admits in its answer, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and is subject to the Board's jurisdiction. I also find, as the Respondent admits, that the Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Respondent fabricates pipe for clients in the petroleum and chemical industries. The manufacturing process includes cutting, fitting, welding, and painting pipes. The Respondent opened its facility in Pekin, Indiana, in mid-2015. The site has a fabrication building, a painting building, a receiving building, and a building for hydro testing, i.e. testing whether the pipe will hold or leak under pressure. The painting building is owned by a different entity, Globe Mechanical, which operates a unionized facility in New Albany, Indiana. The Pekin facility also contains a smaller building, where a third party x-rays pipes to determine if any defects in the weld exist. At the time of the hearing, the Respondent employed a total of around 30 people, including 20 employees in fabrication. The latter group includes seven pipe welders and two pipe fitters. The Pekin fitters and welders are not unionized.

As for the management hierarchy, Marlin Andres is the Respondent's owner, as well as the owner of Globe Mechanical. His son, Houston Andres, is the Respondent's director of operations and reports to his father. Houston Andres works from an office trailer across the street from the fabrication shop. Employees park their cars in a lot adjacent to the trailer. They then cross the street to the front door of the shop. Benjamin Hunley is the shop foreman. He typically works from 6 a.m. to 4:30 p.m. in the fabrication shop and spends some 95 percent of his time on the shop floor. He spends the remainder in the "perch," an office overseeing the entire shop floor. Hunley began working for the Respondent in July 2016 and became the shop foreman in February 2017. Sherry Cress has been the Respondent's office manager since September 2015. She works in the reception area of the office trailer and is the only other Respondent employee who is stationed there with Houston Andres.[1] In February 2016, the Respondent hired Ralph Davis as a fitter.

B. The Union's Organizing Campaign

In June 2017, the Union learned of the Respondent's facility in Pekin and decided to go forward with an organizing campaign.[2] On June 29, John Kurek, the lead organizer of the Indiana State Pipe Trades Association, and fellow organizer Brian Moreno went to the Respondent's facility to handbill and speak to employees. When employees began their lunch break, the two stood at the doorway entrance to the facility, across the street from the office

[1] In its answer, the Respondent admits that Houston Andres and Hunley are supervisors under Sec. 2(11) of the Act. The Respondent denies that Cress is a 2(13) agent.

[2] All dates hereinafter are in 2017, unless otherwise specified.

trailer and employee parking lot. They handed out a flyer stating "Are you getting what you deserve?" at the top. It then listed the hourly wage and benefit rates for the Globe Mechanical unionized job classifications in New Albany. The bottom of the flyer said, "You deserve the wages and benefits that Union Globe Fab Shop workers get. If you are interested in UNION membership and would like to be paid fairly. (sic) Please call an Indiana State Pipe Trades Association Representative." The names and phone numbers of Kurek and Moreno appeared at the bottom of the handbill. The flyers also were placed underneath the windshield wiper blades of cars in the Respondent's parking lot.

From a window in the office trailer, Houston Andres observed what the two union representatives were doing, including speaking to employees.[3] He then walked over to the shop entrance and introduced himself. Kurek gave him a copy of the union wage scale handbill and the three spoke briefly. The representatives told Andres they were there to inform the employees of that wage scale and recruit for the Union. Andres told Kurek and Moreno they were more than welcome to stay as long as they wanted.

Davis returned to the shop following lunch with the union wage scale flyer in his possession. He and fellow employee Rodney Grangier began speaking about it. Davis noted the flyer indicated a journeyman like him was making $12 per hour more at the Globe Mechanical unionized facility, not even counting the additional $20+ per hour in fringe benefits. As they discussed this, Hunley walked up to them. Hunley stated that the Pekin facility was built to be nonunion and Marlin (Andres) would close the place before he let it become union.[4] That evening, Kurek and Moreno met with Davis. They discussed the unionized facility in New Albany, the benefits of unionization, and what would have to happen to unionize the Pekin facility. For the next several months after meeting with them, Davis frequently spoke to his fellow employees about those topics.

On the next day, June 30, Kurek and Moreno returned to the Respondent's facility to handbill again. Kurek parked his car half on and half off the narrow road between the shop and

[3] Hereinafter, all references to "Andres" are to Houston Andres, unless otherwise specified.

[4] I credit Davis' testimony concerning what Hunley said to him and Grangier, over Hunley's denial. (Tr. 284–285, 303–304, 306–307, 590–592. Grangier did not testify at the hearing.) Overall, I found Davis to be a credible witness, whose calm and matter-of-fact demeanor was indicative of reliable testimony. On this topic, his demeanor was assured and he was consistent on both direct- and cross-examination. He confidently recalled what prompted Hunley's response and the location of the conversation. Davis also readily admitted this was the only time a member of management made any direct comment to him about the Union. In contrast, Hunley's testimony regarding his conversations with employees about the Union was abbreviated at best, a characteristic appearing often in his overall testimony. He did not confirm or deny whether he even had a conversation with Davis and Grangier concerning the Union and, if so, what he said to them. Instead, Hunley stated generally that he told employees he had a good experience and learned a lot when he previously was a union member. He offered no specifics about whom he told, when he told them, or what other things were said during such conversations. Hunley also did not specifically deny telling Davis that Marlin Andres would close the place before he let it become union.

the parking lot. Andres and Hunley approached Kurek and asked him why he was blocking the road with his car. When Kurek shrugged his shoulders in response, Andres told him "Why don't you park your car in our parking lot, over there in the gravel lot?" Kurek asked Andres if he was giving Kurek permission to park his vehicle in the Respondent's lot. Andres responded "Of course." Kurek and Hunley handed out flyers to about 15 to 20 employees that day and observed employees going into the shop with them. Andres and Hunley observed the handbilling by the union representatives. Andres also learned from an employee, Dustin Partridge, that Kurek and Moreno had been to a nearby gas station to talk to employees and invite the employees to lunch to discuss the Union.

On July 11, Kurek spoke to Nathan Adams, who was formerly employed by the Respondent for 6 months in 2015, but was not working at the time. Adams told Kurek he got Kurek's phone number from Davis. Kurek told Adams about the Union's organizing campaign in Pekin. He asked Adams to seek employment with the Respondent and help with the campaign. Adams agreed to do so.[5]

On July 13, Kurek, Moreno, and a third union representative returned to the Pekin facility and handbilled again. In addition to the flyer they previously handed out, the representatives brought a new handbill to give to employees. The document had a "UA Local 502" header and stated that membership was available for journeymen and apprentices in the welder, fitter, and metal tradesmen classifications. The flyer also advised the employees to call the Union if they were interested in membership and again provided Kurek's and Moreno's contact information. The representatives spoke to about 15 to 20 employees on that date. They also spoke to Andres and Hunley again. Kurek gave Andres a copy of a different union pamphlet, entitled, "Are You Ready to Take Your Business to the Next Level? Expand Your Business with . . . UA Affilation (sic)." Kurek told Andres he would like to see a similar relationship in Pekin as they had in New Albany. Andres told him "that would be Marlin's call" and Andres thought they were going to keep the shop non-union. Hunley mentioned to Kurek that he had been a member of the Union before and "he thought that we were wasting our time there."[6]

Apparently on July 25, Andres hired Adams as a welder. At some point, Hunley administered a welding test to Adams, as the Respondent did for all new hires. Adams needed five or six tries to pass the entire test. Following his hiring, Adams began speaking to employees about unionizing, either in his booth on the production floor or on break time. In

[5] Tr. 59–60.

[6] I credit Kurek's testimony as to the statements made to him on July 13 by Andres and Hunley, as well as that he provided Andres with a copy of the business pamphlet that day. (Tr. 63–65, 603–604.) Andres claimed to not have seen or spoken to Kurek and that the business pamphlets were placed under the wipers of employees' cars. (Tr. 351–352, 505.) I find Andres' contention regarding the pamphlets illogical, given the target audience. Moreover, Hunley did not deny speaking to the Union representatives that day or corroborate Andres' claim that Andres did not speak with them.

total, Adams spoke to eight to nine welders and fitters about the benefits of the Union and what it could do for employees.[7]

In August and September, Kurek maintained phone contact with Davis, Adams, and other employees of the Respondent. Moreno and Sam Rouse, another union representative, also made house calls to employees.

Then on September 17, Rouse and Paul Williamson, apparently another union representative, went to the Respondent's facility to inquire about being hired. Rouse wore a union t-shirt that said, "Local 502" on it. The two went into the office trailer, where they were met by Office Manager Sherry Cress. Unbeknownst to Cress at the time, Rouse had turned on a recording device before entering the trailer. He then recorded the entire conversation he and Williamson had with Cress that day. Rouse introduced himself and told Cress he saw they were hiring. When Cress confirmed that, Rouse and Williamson asked for job applications. Then the following back and forth occurred:

ROUSE:	Uh, y'all hire union people?
CRESS:	No.
ROUSE:	You don't hire union people?
CRESS:	No, we're nonunion here.
ROUSE:	You're nonunion?
CRESS:	Yeah.
ROUSE:	Well, could I fill out an application anyway, or?
WILLIAMSON:	We can apply?
CRESS:	You can anyway, I guess. I don't know.
ROUSE:	Okay.
CRESS:	I guess. But yeah, we're nonunion.
ROUSE:	Okay.
CRESS:	Our um, New Albany location, they're union down there.
ROUSE:	Yeah..
CRESS:	In New Albany. But we can't—
ROUSE:	Okay. Yeah, we just saw you were taking applications, so.
CRESS:	Yeah. Yeah. They're union down there; but were nonunion up here.
ROUSE:	You don't think we'd get hired then, huh?
CRESS:	They normally don't hire union.
ROUSE:	Okay.
CRESS:	Because we have our union shop down there.

[7] Tr. 176–178, 359, 369, 474, 574. Counsel for the Respondent and the General Counsel stated in questions to Andres that Adams' hiring date was July 25, but no witness actually testified to that date. In addition, witness testimony conflicted concerning who initiated the contact between Adams and Andres in July 2017, an immaterial fact. (Tr. 173–174, 357–358, 574.)

The two then took their job applications with them and left the trailer. On September 22, Rouse dropped off his and Williamson's completed applications. He called Cress a week later to check on the status of his application and she said the Company would contact him. However, the Respondent never did get back to Rouse about his application.[8] As the officer greeter, Cress is authorized to hand out job applications to any visitor who asks for one and accept the applications upon return. She is permitted to answer questions about job applications. Cress otherwise plays no role in the employee hiring process.[9]

At some point in the months after Adams was hired, possibly near the end of September, he was speaking with two other employees about union pay scales. They were talking at a table in front of the booths in the shop. Hunley walked up at the tail end of the conversation, said that he was in a union, and "money is not everything." After the other employees left the area, Hunley told Adams that Marlin Andres would shut the shop down, if the employees tried to get a union in there.[10]

On September 29, 1 week after Rouse and Williamson submitted their job applications, Dale Robbins turned in his own application for employment to the Respondent. On October 2, Robbins met with Andres for an interview. The two discussed the welder job and Robbins' prior experience. Andres asked Robbins how he found out about the place. Robbins responded that a friend of his who worked for the unionized Globe facility told him about it. At one point, Andres asked him "Are you union?" and Robbins replied that he was not. Andres hired him

[8] GC Exh. 19 contains a transcript of Rouse's recording, which I rely upon as the best evidence where witness testimony about the conversation conflicts with it. Cress and Rouse testified consistently regarding their remaining interactions. (Tr. 312–317, 557–559.)

[9] Cress has a variety of other job duties, including payroll, accounts payable, accounts receivable, answering incoming calls, greeting visitors to the office, and receiving and distributing the mail. (Tr. 550–567.) For payroll, Cress enters employees' time into payroll software from a spreadsheet produced by Hunley. She then prints out a check register and enters direct deposits into bank software. If a former employee files for unemployment benefits, Cress fills out and submits any protest form from the Respondent, by transferring information from the employee's termination sheet filled out by Andres. Cress also handles the Respondent's filing of quarterly payroll tax reports. She transfers information from the system onto the paper tax form and then signs the forms as the preparer. Cress submits the Respondent's required filings with the State of Indiana. In the past, she filed forms for the Respondent with the Federal Occupational Safety and Health Administration, reporting work-related injuries and illnesses for 2017. Cress also submits completed employee insurance application forms to the Respondent's broker and communicates with the insurer at times about employee insurance. She completes packing lists and bills of lading for outgoing shipments. Cress is paid an hourly wage.

[10] I credit Adams' testimony in this regard. (Tr. 178–179, 201–203.) Overall, I found Adams to be a credible witness who delivered his responses to questions with certainty, while presenting a confident demeanor on the stand indicative of reliable testimony. Adams exhibited these traits when testifying about this specific conversation and was consistent on direct and cross. Moreover, the two comments attributed to Hunley logically fit together. For the same reasons discussed above in footnote 4, I do not credit Hunley's general denial that he made these statements.

and told him he could start the following Monday.[11] On October 9, Robbins reported for work at the facility. That day, he got to know Davis and went to lunch with him. The two discussed how the Union had come to the Respondent's facility and was trying to organize the employees before Robbins was hired. Thereafter, Robbins repeatedly discussed the organizing effort with Davis, Adams, and other employees.[12]

On October 10, Davis called Kurek and told Kurek he was 99 percent certain the Union would win an election, if it was held at that time. Davis told him the employees had received their reviews, but had not gotten raises they were promised. He also told Kurek that the employees discussed how it was unfair and how the New Albany employees doing the same work were being paid more than them. Davis asked Kurek what they needed to do to get the organizing campaign going. Kurek suggested a meeting with him, Davis, and Adams. Davis told Kurek about the Respondent hiring Robbins and Robbins being onboard with union organizing. Kurek told Davis to bring Robbins to the meeting as well.

On October 18, that meeting took place at a restaurant in Scottsburg, Indiana. Kurek, Rouse, Davis, Adams, and Robbins attended. Kurek discussed with the three employees how to

[11] I credit Robbins' uncontroverted testimony concerning what Andres said to him during the job interview. (Tr. 219–223.) Andres did not deny asking Robbins if he was union. Andres stated only that he conducted the interview and asked Robbins who referred him to the Respondent. (Tr. 134–135.)

[12] Although I also credit Robbins' testimony regarding this union activity, I found other portions of his testimony unbelievable. First, I do not credit his testimony that he wore union stickers at work while employed with the Respondent, in large part because of repeated inconsistencies and evasiveness in that testimony. On direct examination, Robbins testified that he displayed multiple union stickers, including one from U.A. Local 502, on the lunchbox he brought to work each day and kept at the front entrance to the fabrication shop. (Tr. 229–232.) He also stated he had the stickers on his welding hood, including one Kurek gave him. (Tr. 230, 243–244.) But Robbins became evasive when pressed whether he wore a welding hood with union stickers Kurek had given him while he was working. (Tr. 251–256.) Eventually, he conceded that he did not put those union stickers on his welding hood until after he was discharged. Ultimately, Robbins claimed he had two welding hoods at the Respondent, one with union stickers on it and another one without, but that he only wore the one without stickers on it and left the other one in his welding booth. After all that, Robbins conceded that he stated in his sworn affidavit provided to the General Counsel during the investigation of this case that "I did not wear any stickers or anything showing my support for the Union, but I did pass out stickers to a couple of guys that signed their union cards. I suggested they put them on their lunchbox." Finally, Robbins' demeanor during this testimony suggested a lack of reliability.

Second, I do not credit Robbins' testimony that Hunley told him shortly after he was hired that they would shut the doors down, if employees brought the Union in. (Tr. 249–251.) Robbins did not testify to this alleged statement on direct, but then raised it during cross-examination. He claimed Hunley made the statement to him during the first week he worked at the facility. When pressed as to whether he "very clearly and very specifically" recalled the statement, Robbins then hedged his response by using the word "basically" twice. Then Robbins was confronted again with his affidavit, in which he said: "I never heard Ben (the foreman) or Houston (the project manager and the owner's son) say anything about the Union while I worked there." When the Respondent's counsel asked him if that was correct, Robbins responded "Okay, let me rephrase what I said." His demeanor again indicated untrustworthy testimony.

obtain a Board election. He had them sign authorization cards. He also provided them with blank authorization cards and employee contact information cards to hand out to their coworkers. Finally, Kurek gave them two Board-produced flyers on elections and protecting their rights. Following the meeting, Robbins obtained four signed authorization cards, although one employee eventually asked for the card back. Davis obtained a signed authorization card from one employee. Adams likewise spoke to employees about getting their signatures on authorization cards, but never obtained any signed cards.

C. The Respondent's Discharges of Adams, Davis, and Robbins

Two days after the meeting with Kurek, on October 20, Andres met with Adams shortly before the end of the workday. Andres thanked Adams for coming back, told Adams he was a good TIG (manual) welder, but said that "it wasn't working out" and he had to let him go. Andres provided no further explanation. Adams responded that he appreciated Andres giving him another shot.[13]

Robbins was off work from October 21 through 25. When he returned to work on October 26, employee Dustin Partridge came to speak to him on the shop floor. Partridge asked whether Robbins had passed his welding test with the Union. Robbins said no, that he had been off sick and had not taken a welding test. Robbins then asked Partridge whether he was in or out with the Union, and Partridge replied no.[14]

The next day, October 27, Andres entered the fabrication shop after the morning break. He was joined by employee Michael McCawley, whom he had asked to accompany him as a witness. Andres "gathered" up Davis, Robbins, and Grangier one at a time and told them to go stand by the door at the front corner of the fabrication shop. There, he showed them forms that each of the three had signed acknowledging they received the Respondent's policy on drugs. Andres then held the drug policy up in the air. He told the three it gave him the ability to test them for reasonable cause, he believed he had reasonable cause, and they were going to jump in the back of his truck and go take a "piss test." Grangier shrugged and said he would not pass for marijuana, but that he did not smoke it at work. Grangier told Andres he knew that Grangier did drugs when Andres hired him. Davis and Robbins denied doing drugs and Davis told Andres he had no basis for the suspicion. All three refused to take a drug test. Andres responded that either they were going to get in his truck or they would have to sign a sheet of paper stating that they were refusing to take the test. He told them they did not have to go to get tested, but they would be suspended and have to leave. Andres had each individual sign a form indicating they had refused a reasonable cause drug test and their refusals were grounds for termination of employment, based upon the Respondent's drug policy. Andres had prepared the refusal forms prior to entering the fabrication shop. Andres told the employees

[13] Tr. 164, 184–185, 364. I do not credit Andres' claim, at Tr. 421–422, that he discussed Adams' performance and attendance deficiencies with Adams when notifying him of his discharge. The claim was not made initially and was partially elicited through a leading question.

[14] Tr. 271–272.

they were suspended, their employment with the Company would be evaluated, and Andres would give them a call at a later time. Davis and Robbins left the facility. Later that same day, Andres informed Davis and Robbins via telephone that they were discharged. Andres also terminated Grangier's employment. The termination reports Andres completed contained a section setting forth the explanation for their discharges. For all three, Andres wrote "refusal to submit to drug test."[15]

D. The Respondent's Asserted Reasons for Discharging Davis and Robbins

The Respondent contends that, on October 23, Andres had reasonable cause to test Davis and Robbins for drug use. The Respondent also asserts that Andres discharged the two because, for months prior to then, they consistently had been suspected of marijuana use at work; on the morning of October 27, they smelled of marijuana; and, that same day, they each admitted they would fail the drug test if they took it.[16] These contentions put the credibility of the testimony from Andres, Davis, Hunley, and Robbins at issue.

1. The Respondent's drug and safety policies

The Respondent's policy on drugs states in relevant part:

> The illegal use, possession, distribution, sale and/or manufacture of drugs which adversely affects an employee's job performance, has an adverse effect on the company, or which jeopardizes the safety of the other employee's (sic) and/or clients is prohibited.

[15] Andres, Davis, McCawley, and Robbins all testified concerning the October 27 events. (Tr. 233–239, 263–267, 293–296, 428–435, 442–445, 470–473; see also GC Exh. 10 and R. Exhs. 3–4, 6–7, 19–24.) By and large, their testimony was consistent, except for one critical point. Andres contended that, in addition to Grangier, Davis also stated he would not pass a drug test and Robbins nodded his head in affirmance while Davis was saying this. (Tr. 431.) In contrast, Davis testified he and Robbins told Andres "we don't do drugs" and Davis also denied saying he would not pass. (Tr. 294–295.) Robbins testified that he told Andres he did not do drugs and then refused to take a drug test because he felt he was being targeted. (Tr. 235–237.) As to this conflict, I find the testimony of Davis and Robbins credible. In addition to denying to Andres that he did drugs, Davis described his anger at the demand for a drug test, saying he told Andres he was not going anywhere with him, then cussed and told him he was getting his helmet and leaving. I found Davis' demeanor to be sincere and his testimony incongruent with the claim that Davis said he would not pass the test. If an individual actually conceded he would not pass a drug test, the more likely reaction would be one of contrition, not anger. Further solidifying the conclusion is the Respondent's conspicuous failure at the hearing to question Davis about what occurred on October 27. I also find Andres' claim that Robbins was nodding his head to confirm he would not pass a drug test to be implausible. It certainly does not comport with Robbins' contentious demeanor on the stand. Moreover, McCawley, whom Andres brought with him to the fabrication shop as a witness, did not corroborate this portion of Andres' testimony. (Tr. 442–443.)

[16] R. Brf., p. 50.

> Violation of the above portion of the policy is grounds for disciplinary action up to including (sic) termination.

The Respondent also maintains a "Company Safety Policy," which states:

> NO employee shall report to work under the influence of alcohol or mind altering substances. The use or possession of these substances while on the job shall result in disciplinary action. (See Policy on Drugs).

For "reasonable cause" testing, the drug policy states: "If possible, two (2) or more supervisors . . . will make the determination as to when there is reasonable cause to test." Davis and Robbins both signed forms when they were hired acknowledging receipt of the drug and safety policies. Prior to late October, the Respondent never had drug tested an employee based upon reasonable cause. In fact, the Respondent did not have reasonable cause drug testing in place before then. Andres had to contact the Respondent's drug testing laboratory to set it up.[17]

2. The claimed reasonable cause for drug testing

Andres initially testified that he obtained reasonable cause to drug test Davis and Robbins on October 20.[18] As discussed below, he later changed that date to October 23. Andres offered multiple bases to establish reasonable cause. The first was an alleged observation by Andres outside a Dollar General store. The second was Hunley's reports to him in the 2 to 3 months prior to their discharges that Adams, Davis, Grangier, and Robbins had been under the influence of marijuana at work. The third was that Davis, Grangier, and Robbins smelled like marijuana on the morning of October 27, when he went to tell them they had to be drug tested.

As to the first basis, Andres originally testified that, during the afternoon break from 3 to 3:15 p.m. on October 20, he drove to a nearby Dollar General store. He parked his vehicle, began walking towards the store, and observed Grangier's van there. When Andres walked past the van, he smelled the odor of marijuana, looked back, and saw Davis in the passenger seat through the window on that side of the van. Davis' window was closed. Andres proceeded into the store. When he came out, the van was gone. Andres returned to work, but did not speak to Davis. Instead, Andres decided to drug test Davis. Although he did not see Grangier or Robbins in the van, he also decided to test them, because the three "regularly traveled" together as a group on breaks. Following this initial testimony, the parties entered into a joint stipulation regarding video recordings produced by Dollar General, in response to a subpoena from the General Counsel. The stipulation establishes that, from 3 to 3:15 p.m. on October 20, Andres did not appear at the front entrance door or at any cash register at the Dollar General. Thereafter, Andres testified he was mistaken about the date he saw Davis at the Dollar General. Andres said that, after watching the Dollar General video, he reviewed his

[17] Tr. 152–155, 165, 171, 546; R. Exhs. 3, 4, 6, and 7.

[18] Tr. 149.

emails and text messages on his phone and determined the actual date was October 23. Andres offered that, on October 23, he sent a text message to his cousin, Brian Kruer, and later spoke to Kruer by phone about the drug testing issue. Kruer happens to be the President of the unionized Globe Mechanical. Andres also claimed to have sought the counsel of an attorney via email about a reasonable cause drug test on October 25. That email stated only: "Attached are copies of our drug policy the employees sign and in the employee handbook." Davis denied going to the Dollar General store on either October 20 or 23. Davis testified he had not been there for likely a year. He also stated that he, Adams, and Grangier went to a nearby gas station on breaks, because they could obtain hot food there which the Dollar General did not have. Robbins testified that he left work early on October 20 at 2:30 p.m. to see a doctor. Robbins also said that, because he was sick, he did not return to work until October 26. Thus, Robbins could not have been at the Dollar General on either date.[19]

I do not credit Andres' testimony regarding the alleged incident at Dollar General, as several factors detract from its credibility. First and foremost, had Andres actually smelled marijuana coming from Grangier's van and observed Davis therein, I find it implausible that he would not have confronted the two either in the parking lot or at the fabrication shop before they returned to work that afternoon. The dangers of allowing welders and fitters to work while under the influence of illegal drugs are self-evident. Both Andres in his testimony and the Respondent in its written policies acknowledged those dangers. To permit employees to return to work after concluding that they were using drugs on break is illogical and therefore unlikely to have occurred. Moreover, to not document this event in some manner, especially when it was being relied upon as the reasonable cause to drug test the employees, likewise is nonsensical. The second factor is Andres' self-contradictory testimony concerning the date of the alleged incident, an error Andres only acknowledged after being confronted with the Dollar General video. I recognize that witnesses often are unable to recall with specificity exact dates or times of events. But that is highly unlikely to be the case here, given the magnitude of the alleged incident. Third, the record evidence is insufficient to corroborate Andres' revised October 23 date. The email Andres sent to his attorney was on October 25, not October 23, and it makes no mention of any incident at the Dollar General. The Respondent did not enter into evidence the text message Andres allegedly sent to his cousin Kruer regarding drug testing on October 23. And Kruer did not testify, including about anything Andres told him regarding the Dollar General incident. The Respondent also could have, but did not, make a request to me for a subpoena to attempt to obtain the Dollar General video recordings for October 23. Fourth, Andres offered conflicting testimony in this proceeding concerning who he saw that day. At the hearing, Andres stated he only saw Davis but, in his earlier affidavit provided during the investigation of this case, he testified that he also observed Grangier sitting in the driver's seat.[20] Finally, Andres' demeanor on the stand when testifying on this topic during the Federal Rule of

[19] Tr. 149–151, 155, 159–162, 301–303, 424–428, 534–538; Jt. Exh. 1 and R. Exh. 28. The transcript at p. 149 contains an error, which I now correct. At line 12, the transcript should read: "What was your reasonable cause on October 20?" Andres' answer began with "I smelled" at line 12–13. The erroneous text merged the answer into the question. The transcript contains an additional error at p. 603. The Union called John Kurek, not Brian Kruer, as a rebuttal witness.

[20] Tr. 469.

Evidence 611(c) examinations of counsel for the General Counsel and the Charging Party noticeably changed. He became hesitant and subdued when answering and his responses were abbreviated. He also repeatedly stated he could not recall specifics of the incident. Overall, Andres appeared nervous when testifying about critical issues in this case, including this one. In contrast, Davis exhibited a calm and consistent demeanor when testifying about the alleged event, which was indicative of reliable testimony. Davis' explanation that the group did not go to Dollar General on breaks because it did not have hot food like the gas station is logical and believable. I likewise credit Robbins' uncontroverted testimony that he was absent on the October 23 date that Andres claimed the Dollar General incident occurred. The Respondent had employee time records which could have been introduced, had they conflicted with Robbins' testimony. For all these reasons, I find that the Dollar General incident did not occur.

The second alleged basis for reasonable cause drug testing of Davis and Robbins was Hunley's claim that he repeatedly smelled marijuana on Adams, Davis, Grangier, and Robbins for months prior to October 27. Hunley testified that he suspected Grangier and Davis of marijuana use because he would "smell it" during breaks and lunchtimes. Although he did not indicate when this started, Hunley stated his concern increased over time, because "in the summertime [he] would smell it more often." Hunley also smelled marijuana around Adams and Robbins, but could not remember the dates this occurred. As to his reaction to smelling marijuana on the employees, Hunley offered this opaque testimony:

> Q: And did you say anything to those employees about their suspected use of marijuana?
> A: Yes, I would. Yes, I would.
> Q: Tell the Court what you did in that regard.
> A: I would let them know that I would smell the odor of marijuana.
> Q: How did they respond to that?
> A: Nothing changed.
> Q: How often did you go to Houston with your concerns about the use of marijuana, particularly after Adams and Robbins started working?
> A: I'm going to say half a dozen times.
> Q: And what was Houston's response on that?
> A: Houston told me he would start paying closer attention and then start looking to it as well.

Hunley claimed to have verbally counseled Adams on this, but not Davis, Grangier, or Robbins. He also never recommended to Andres that the four receive written discipline for violating the Respondent's drug policy. Andres confirmed in his testimony that Hunley reported to him on multiple occasions that Adams, Davis, Grangier, and Robbins all smelled of marijuana. He stated the reports began 2 to 3 months prior to October 27. But Andres admitted he did not

discipline or otherwise take any action against the employees in response to Hunley's reports during that time period.[21]

I likewise do not credit this testimony, which I find incredulous. The notion that a front-line supervisor would smell marijuana on four employees six different times and do nothing more than tell the employees he could smell it is not believable. Like Andres, Hunley acknowledged the obvious point that an employees working at a pipe welding and fitting plant while under the influence of marijuana would pose a significant safety risk for all the Respondent's workers, because the employees are operating heavy equipment, overhead cranes, welders, and grinders.[22] To sit idly by for 2–3 months cannot be reconciled with that fact. The Respondent had the authority under its drug and safety policies to issue discipline to the employees, including discipline short of discharge. The Respondent's drug policy does not require two supervisors to have determined reasonable cause existed, before an employee is drug tested. It only set forth that this should be done "if possible." If Hunley actually did report this to Andres six times, the Respondent would have had reasonable cause to test the employees well before October 27. At a minimum, Andres and Hunley would be expected to document what was occurring to establish a record of the employees' suspected drug use. The lack of discipline and any documentation concerning their suspicions speaks volumes regarding the veracity of their testimony concerning this alleged history of drug use. Moreover, Davis had been working for the Respondent for nearly 1-1/2 years by the summer of 2017, without any indication he had been using marijuana at work. Finally, the demeanors of Andres and Hunley when testifying about this were not trustworthy. Hunley in particular appeared tentative on the stand and provided abbreviated answers lacking detail. Accordingly, I find that Hunley did not repeatedly smell marijuana on Davis and Robbins prior to their discharges.

The third alleged basis for reasonable cause is Andres' contention that he could smell marijuana on Davis and Robbins when he gathered them up on October 27. I again do not credit this testimony from Andres. Had this occurred, Andres certainly would be expected to mention that fact to the employees, when telling them he had reasonable cause to drug test them. By Andres' own account, he did not do so. He also never documented this allegation. And when McCawley testified, he did not corroborate Andres' claim that the employees smelled of marijuana in the fabrication shop that morning, even though McCawley's sole purpose to being there was to serve as a witness. I conclude the Davis and Robbins did not smell of marijuana the morning of October 27.[23]

Based upon these credibility determinations, I find that the Respondent did not have reasonable cause to drug test Davis and Robbins.[24]

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[21] Tr. 152, 464–465, 584–587, 597–599.

[22] Tr. 422, 435, 599.

[23] Tr. 148, 166, 428–429, 435, 440–445, 448–450, 587–589.

[24] In making the findings of fact contained in this section, I do not rely upon the drug tests administered to Adams, Davis, and Robbins shortly after their discharges. (GC Exhs. 15–17.) The Union sent the three for the drug tests as part of their membership application process. Adams took the test on October 26, and Davis and Robbins followed on November 9. The results were negative for all of them.

3. The asserted reasons for the discharges of Davis and Robbins

The final issue is the credibility of Andres' testimony concerning why he discharged Davis and Robbins. The Respondent's termination reports contemporaneously prepared by Andres stated that Davis and Robbins were discharged solely due to a "refusal to submit to a drug test." But on direct examination, Andres testified as to an additional reason:

> It was evident to me [on October 27] that what Ben Hunley had reported to me about them smoking marijuana while at work—during business hours was true, and that they had been putting the safety of all of the employees at risk and then their refusal to submit to the drug test.

Then on cross-examination, Andres again changed his justification:

> Q: And isn't it true that [the] refusal to take the drug test did not play a role in your decision to terminate them?
> A: It wasn't the sole determinatory factor.
> Q: Is it your testimony that it was a factor at all in your decision? Was it a factor in your decision?
> A: No, not necessarily.
> Q: So it wasn't a factor?
> A: No, it was not a factor.

Thus, Andres did an about-face on this topic at the hearing and abandoned his earlier asserted reason for discharging the two. In acknowledging this fact in its brief, the Respondent states that, rather than the refusal to take the drug test, Andres relied upon the admission of Robbins and Davis that they would fail the drug test if they took it; the consistent, prior suspicions that they used marijuana at work; and Andres smelling marijuana on the two the morning of October 27. None of these were asserted as contemporaneous reasons for the discharge and I have found all of the assertions to be not credible. Due to the lack of consistency in the Respondent's asserted reasons for the discharges and Andres' uncertain demeanor when testifying on this topic, I do not credit Andres' testimony regarding the reasons he discharged Davis and Robbins.[25]

However, no expert testified concerning the length of time marijuana would remain in a person's system if ingested. Thus, the relevance of these results to Andres' allegations of the drug use by Davis and Robbins on October 23 and 27 was not established.

[25] R. Exhs. 20 and 22; Tr. 434–435, 473–474.

E. The Respondent's Asserted Reasons for Discharging Adams

The Respondent contends it discharged Adams on October 20, due to excessive absenteeism and poor work performance. In this regard, the credibility of the testimony from Andres, Hunley, and Adams is at issue.

1. The Respondent's employee handbook policies

The Respondent maintains an employee handbook which contains a progressive discipline policy. The policy states that "employees will be given penalties that become increasingly severe each time an offense is repeated or a performance improvement is not shown." The steps of progressive discipline are verbal counseling, written reprimand, unpaid suspension, and termination. The policy also states: "Before the imposition of any discipline, employees will always be given an opportunity to relate their version of the incident or problem and provide any explanation or justification they consider important." The Respondent also maintains an "Absenteeism & Tardiness" policy, stating:

> Employees will be charged with an absence when they fail to report for their scheduled work hours. Absences of several days duration will be treated as one occurrence. Employees will be considered tardy when they report to work more than 6 minutes past their starting time, leave early, or extend an authorized break. Whenever you are absent or tardy you must notify your supervisor 1 hour, or as far in advance as possible, and explain the circumstances and probable duration of absence or tardiness…In the event of a prolonged illness, a statement of your doctor must be submitted indicating the nature of your illness and a prognosis of the time you will be away from work.

The policy defines "excessive absenteeism" as having three absences in a 1-year time period. It calls for the same progressive disciplinary steps as described above, with the fourth occurrence resulting in termination. Finally, as to job performance, the Respondent's "Carelessness & Incompetence" rule states: "Employees who are careless or negligent in performing job duties will be subject to progressive discipline." It also states:

> Counseling and extra training will be given to any employee who fails to meet the performance expectations established for their positions. This communication and counseling will take the form of regularly scheduled performance appraisals, as well as ongoing job instructions and guidance. An employee's failure to improve work habits and production after counseling and additional training, may lead to discharge.[26]

[26] CP. Exh. 14, pp. 11–12.

2. The asserted reasons for Adams' discharge

Regarding attendance, Hunley testified he is responsible for timekeeping, through which he tracks employee attendance. Employees fill out a time card daily and Hunley enters their times in a computer spreadsheet. Hunley stated that, within the first 3 weeks of Adams' reemployment, he raised a concern with Andres concerning Adams' tardiness. Thereafter, he discussed Adams' absenteeism with Andres about every other week. Hunley also discussed attendance, tardiness, and leaving early with Adams on multiple occasions, to which Adams responded he had to see the doctor. Hunley denied that Adams ever provided him with a doctor's note on those occasions. When Adams was late, he told Hunley it was because of his long drive to work. Adams also had numerous excuses for leaving early. As to job performance, Hunley testified that, because he is on the shop floor all the time, he can monitor the employees' work. His evaluation includes visual inspections of welds. Hunley also receives reports about all welds that have been rejected during subsequent inspection. Hunley stated Adams' performance was at the bottom of the welders, including having four to five times more rejected welds and taking 4 to 5 hours to perform a weld that should take two. Adams' issues were with semiautomatic welding, which accounts for roughly 70 percent of the overall work. Hunley assigned one of his better welders, Dale Mull, to Adams for 5 to 6 days, but that did not result in much change. He also assigned Adams to more manual welds. Hunley discussed these performance problems with Adams on multiple occasions. Adams said he would do better, but his performance did not improve. Hunley reported Adams' performance issues to Andres about every other week, starting shortly after Adams was rehired in July. Finally, Hunley testified that, on October 13, he observed Adams working for 6 hours on a job Hunley thought should take 1 hour, and then Adams left work early. Hunley felt he had exhausted all options and came to the conclusion that Adams' employment should be terminated. Hunley recommended this to Andres, who took it under advisement. Hunley concedes that, prior to making the recommendation, he had not followed the Respondent's progressive discipline policy with Adams. He provided no explanation for the failure.[27]

Andres initially testified that Hunley reported Adams' absenteeism and poor work performance to him on "multiple occasions" over a period of around a month, but was unable to recall which month or dates the reports were made. He later stated inconsistently that Hunley's reports about Adams' deficiencies were made "[a]lmost the whole time he was employed." According to Andres, shortly after he hired Adams, Hunley told him Adams was having difficulty with the semiautomatic welding process. Andres told Hunley that Adams was a good welder when he knew him before and Hunley should work with him. When Hunley again told Andres that Adams was not working out, Andres suggested that Hunley put another welder with Adams to coach him. Hunley then assigned Dale Mull to Adams for "a day or two." Hunley also assigned Adams exclusively to manual welds, but reported to Andres that Adams was significantly slower than other employees on those welds. Hunley complained to Andres that Adams was not a very high-quality welder with his amount of rejected welds

[27] Tr. 569–571, 574–582, 592–595.

and was inefficient. Hunley also reported that Adams was constantly late and always had some kind of excuse. Andres stated this went on "to a certain point" and then Hunley came to him and said he could not do anything else with Adams and something needed to happen. Then on October 20, Andres decided to discharge Adams. Andres conceded that, prior to discharging Adams, he never issued any written discipline to Adams for absenteeism, tardiness, leaving early, or work performance. He too provided no explanation for this.[28]

The Respondent also introduced into evidence summaries prepared by Andres as substantive proof of Adams' problems with attendance and work performance.[29] From July 31

[28] Tr. 138–142, 359–364, 417, 421–422.

[29] I admitted the summaries, over the objections of the General Counsel and the Charging Party, pursuant to Federal Rule of Evidence 1006. The first summary shows, from July 31 to October 17, the dates that Adams left early or was absent and the associated work hours lost. (R. Exh. 17.) The underlying documents Andres used to prepare the summary are computerized timesheets created by Hunley from employees' timecards. The second summary shows, from January 1 to October 31, the number of accepted and rejected welds, and the reject percentage, for all welders, including Adams. (R. Exh. 15; see also CP. Exh. 3.) The underlying documents are radiographic inspection reports from a third party responsible for x-raying completed pipes and insuring they were welded properly. The third summary shows the number of inches welded by each welder. (R. Exh. 16.) The underlying documents are isometric drawings of the pipes that were fabricated.

When offering these summaries, the Respondent met all of the requirements of FRE 1006. The underlying documents included all employees' daily time records for 2-½ months; radiographic inspection reports for 10 months; and isometric drawings of the pipes that were welded during Adams' 3-1/2 months of employment. The documents were admissible, but voluminous, and contained information that could not be conveniently examined by the court. In addition, the Respondent made the underlying documents available to the other parties for inspection. However, beyond the rule's requirements, I also must carefully consider the circumstances under which the summaries were prepared and whether they reflect the author's subjective view or interpretation of the underlying information. *Monfort of Colorado*, 298 NLRB 73, 82 fn. 37 (1990). Having so considered, I now exclude R. Exh. 16. The General Counsel and Charging Party demonstrated that the underlying documents used to create the summary had numerous errors in them, rendering the summary unreliable. (GC Exh. 20; CP. Exhs. 4–10.) I also exclude the hours lost column, total hours lost, hours available, and percent absenteeism from R. Exh. 17. Andres stated that he determined the hours lost column by looking at the hours worked of other welders in the same bay as Adams on days he was absent. (Tr. 381–383.) This method involved at least some degree of subjectivity, in particular if welders did not all work the same number of hours in a given day.

I find no merit to the remaining objections of the General Counsel and the Charging Party to the summaries. The first is that the Respondent prepared the summaries for the purposes of litigation, making them inherently unreliable. But a summary under FRE 1006 is always going to be prepared for litigation, to avoid overburdening the record and the trier of fact with the voluminous underlying substantive documents. The rule's requirement that a party be able to inspect those underlying documents addresses the concern about the summary being unreliable. The second objection is that Andres did not rely upon any of the underlying documents in reaching his decision to discharge Adams, rendering the documents irrelevant. I disagree. Andres and Hunley both testified as to Adams' alleged performance and attendance issues. Even if Andres did not rely on the documents, they are relevant to the extent they corroborate that testimony.

to October 17, Adams had six absences from work as of the October 13 date on which Hunley stated he made the recommendation to Andres to discharge Adams. In addition, Adams left work early five times. However, Andres testified that employees could leave early, if their work for the day is complete. The summary does not reflect whether Adams left work early because he had completed his work for the day or for personal reasons. As to work performance and during the period from January 1 to October 31, Adams had the highest percentage of rejected welds to acceptable welds of any welder.

During his testimony, Adams admitted to having been absent from work on occasion, but not that his absences were unexcused. Adams explained he had health problems, had insurance for the first time in a long time, and scheduled numerous doctors' appointments. Adams said he explained this to Hunley and brought doctors' notes for him when he returned to work following such absences. Hunley looked at the notes, but did not take them. Adams also testified that, upon being hired, he expressed concern to Hunley about meeting the 6:00 a.m. start time, given that Adams had a long drive. Hunley told him to do the best he could. Thereafter, when he was late, it was only for 10 to 30 minutes. Hunley did not say anything to him about it. Adams also denied that Hunley ever verbally warned him about absences, arriving late, or leaving early. As to work performance, Adams stated that he had one or two problems with semiautomatic welds, but no more than anyone else. He admitted that Hunley gave him verbal warnings on semiautomatic welds "a couple of times." He also conceded that Dale Mull came over one time and spent 10 minutes showing him how Mull did semiautomatic welds, but that Mull was never assigned to him. He denied that Hunley ever spoke to him about being slow with his work or having too many rejected welds.[30]

Here, I credit Adams' testimony where it conflicts with Hunley and Andres. Adams testified on these topics with the same assured, unruffled demeanor he displayed throughout the hearing. As to attendance, his explanations for why he occasionally was absent and late were convincing. It is logical that a person who had health problems and acquired health insurance for the first time in a long time would take advantage of that and see doctors to get care. Given his long commute, it also is logical that Adams would advise Hunley upon his hire of the potential difficulty in arriving on time. Regarding performance, Adams was sincere in describing how he worked and the lack of any communication or correction from Hunley about him being slow or having too many rejected welds. He also was forthright in acknowledging Hunley's verbal warnings about semiautomatic welds and having Mull speak to him about how to do those welds. In contrast, Hunley's and Andres' testimony about Adams' alleged attendance and performance issues appeared exaggerated and contrived, due in large part to the lack of any documentation. If Hunley actually had a problem with Adams' health-related absences and his occasionally arriving 10 to 20 minutes late for work, a modicum of documentation addressing those issues would be expected. Moreover, Andres' failure to follow the Respondent's progressive discipline policy to address any of these alleged issues likewise

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Thus, R. Exh. 15 remains admitted in full, R. Exh. 16 is rejected, and R. Exh. 17 remains admitted subject to the limitations described above.

[30] Tr. 182–185, 188, 193–198.

undermined his credibility as to why he discharged Adams. When asked why Adams did not receive any written discipline, Andres stated, "I'm not aware." He certainly should have been aware, in light of his role as the sole person responsible for issuing discipline to employees. Furthermore, no corroboration exists for Hunley's critical assertion that he recommended Adams' discharge to Andres on October 13, before the October 18 union meeting. Andres neither confirmed the date nor explained why he waited a week to act on the recommendation. Finally, much of Andres' and Hunley's testimony was elicited through leading questions where answers were either suggested or provided to them, further undermining their credibility. For all these reasons, I conclude that Adams' absences from and late arrivals to work were excused; the record evidence is insufficient to establish he left work early for personal reasons, not because he had completed his work; and, although Adams had certain issues with work performance, the Respondent did not rely on those issues when discharging him.

ANALYSIS

I. DID THE RESPONDENT VIOLATE SECTION 8(A)(1) BY THE STATEMENTS OF CRESS, HUNLEY, AND ANDRES?

The General Counsel's complaint alleges five independent violations of Section 8(a)(1). The claims are premised on alleged statements made by Cress, Hunley, and Andres to employees or job applicants. Section 8(a)(1) of the Act makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed to them in Section 7. A violation of Section 8(a)(1) does not depend on the employer's motive or the employee's subjective reaction to a statement, but turns instead on whether the employer's conduct reasonably tends to interfere with the free exercise of rights under the Act. *Albertson's, LLC*, 359 NLRB 1341, 1342 (2013), reaffd. 361 NLRB 761 (2014); *Naomi Knitting Plant*, 328 NLRB 1279, 1280 (1999).

To begin, the complaint alleges the Respondent violated Section 8(a)(1), when Cress told Rouse and Williamson on September 17 that the Company does not hire union applicants. Before addressing the substance, a preliminary matter must be resolved. The Respondent denied Cress' agency status in its answer to the complaint. If Cress is not an agent, then her statements, even if unlawful, cannot be attributed to the Respondent. Although the General Counsel and the Respondent spent a great deal of time on this issue both at the hearing and in their briefs, it can be resolved in short order. The Board's decision in *Diehl Equipment Co., Inc.* is directly on point and controlling. 297 NLRB 504, 506–507 (1989). In that case, a job seeking pipefitter, John Lehner, went to an employer's facility to see about submitting a job application. Upon arriving, he spoke to Beryl Dyer, a clerical employee who was seated at a desk immediately inside the entrance to the office. Lehner asked Dyer if any work was available. Dyer handed him a job application and told him to fill it out. When he submitted it to her, Dyer examined the application and then said to Lehner "You're union." When Lehner confirmed that fact, Dyer told him he had better go to the union hall to secure employment and that there was not any work available there. Then Dyer said the employer "did not hire union help

anymore." The Board found that Dyer was an agent, because her job "routinely involved handing job applications to individuals and receiving the completed applications from them. Consequently, the [r]espondent had placed Dyer in a position in which she had the apparent authority to provide information and to answer questions relative to the application forms she handled." 297 NLRB at 504 fn. 2. See also *GM Electrics*, 323 NLRB 125, 125–126 (1997) (employer's secretary was an agent, where she was the only person stationed throughout the day in the office, was assigned to distribute and collect job applications, and spoke with applicants about the employer's hiring needs). In this case, the Respondent authorized Cress to distribute and accept job applications, as well as answer any questions from individuals seeking job applications. Cress is the office greeter and anyone who enters the trailer has to speak with her. As a result, the Respondent placed Cress in a position in which she had apparent authority to speak for the Company as to job applications. It matters not, as the Respondent argues, that Cress did not have the additional authority to actually screen or hire employees. Cress was acting as a 2(13) agent when she spoke to union representatives Rouse and Williamson about applying for jobs on September 17.[31]

That brings us to the question of whether Cress' statements to the two representatives were unlawful. This likewise can be dealt with expeditiously. An employer violates Section 8(a)(1) by making statements to employees that union applicants will not be hired. See, e.g., *Exterior Systems, Inc.*, 338 NLRB 677, 678–679 (2002); *Quality Control Electric, Inc.*, 323 NLRB 238, 238 (1997). Moreover, in *GM Electrics*, supra, the employer's secretary, Cecily Eaton, called her supervisor, after several union members sought job applications from her. During the phone conversation, Eaton and her supervisor were discussing one of the individuals, who previously worked for the company. Eaton stated "I know he's union. They're all union." The Board found the statement was unlawful, because it implied that union job seekers would be treated adversely by the employer in the application process. In this case, Rouse initially asked Cress "y'all hire union people?" Cress responded no. Rouse asked again and Cress again told him no. Cress then stated, "we're nonunion" multiple times. When Rouse asked if they could apply anyway, Cress twice said "I guess." She closed by noting the facility normally did not hire union, because they had the union shop in New Albany. Even though she took their job applications, the totality of Cress' statements conveyed the message that the Respondent does not hire union applicants. Thus, the statements violate Section 8(a)(1).

The General Counsel's complaint next alleges that, on three occasions in June, August, and October, Hunley threatened each of the three discriminatees individually with plant closure, if employees selected the Union as their bargaining representative. Based upon my credibility determinations described above, I found that, on June 29, Hunley told Davis and Grangier that the Pekin facility was built to be nonunion and Marlin Andres would close the place before he let it become union. I also found that, at the end of September, Hunley told Adams and two other employees that he was in a union and "money is not everything." After

[31] In reaching this conclusion, I do not rely on evidence the General Counsel presented concerning Cress' other job duties. I find the additional evidence unnecessary to resolving whether Cress was an agent of the Respondent when she interacted with Rouse and Williamson on September 17.

the two other employees walked away, Hunley said to Adams that Marlin Andres would shut the shop down, if employees tried to get a union in there. Hunley's statements did not include any objective facts supporting the stated conclusion and were not couched in terms of the possible effects of unionization. Thus, they were unlawful threats of plant closure. See, e.g., *Reeves Bros., Inc.*, 320 NLRB 1082, 1084 (1996) (supervisor made unlawful threats of plant closure when he told three employees in separate conversations that, if the union came in, the plant would close down, they would have to look for another job, and the plant probably would shut down); *Atlantic Veal & Lamb, Inc.*, 342 NLRB 418, 427 (2004) (supervisor's statements to employees that, if the union came in, the owner would close the business and move to Indiana and that the owner would close the company as he had done on prior occasions were unlawful threats of plant closure). Relying on *Stanadyne Auto. Corp.*, 345 NLRB 85, 89 (2005), the Respondent argues that Hunley's statements, even if made, could not violate Section 8(a)(1), because he was describing a past decision of Marlin Andres to establish the Pekin operation as nonunion. I reject this contention, because Hunley did not present any facts or describe a recollection of actual events that establish Marlin Andres made such a decision. As a result, Hunley's statements violate Section 8(a)(1).[32]

Finally, the General Counsel's complaint alleges that, on October 2, Andres unlawfully interrogated job applicants about their union membership. This allegation is premised on Andres asking Robbins "Are you union?" during his job interview. Based on my credibility determination described above, I found that Andres did ask Robbins this question. Questioning a job applicant about their union status also violates Section 8(a)(1). *Adco Electric Inc.*, 307 NLRB 1113, 1116–1117 (1992). Therefore, I find merit to this complaint allegation as well.

II. DID THE RESPONDENT'S DISCHARGES OF ADAMS, DAVIS, AND ROBBINS VIOLATE SECTION 8(A)(3)?

The General Counsel's complaint alleges the Respondent discharged Adams on October 20, as well as Davis and Robbins on October 27, for their union activities, in violation of Section 8(a)(3). That section provides that it is "an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." To evaluate alleged violations of Section 8(a)(3), the Board's utilizes its longstanding *Wright Line* standard. *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), and approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983). Under *Wright Line*, the General Counsel must demonstrate by a preponderance of the evidence that the employee's protected conduct was a motivating factor for an employer's adverse action. The General Counsel satisfies the initial burden by showing (1) the employee's union activity; (2) the employer's knowledge of that activity; and (3) the employer's animus.

[32] Based upon my credibility determination above, I found that Hunley did not tell Robbins in October 2017 that the Respondent would shut the doors down, if the Union was brought in. Therefore, I recommend dismissal of the complaint allegation, added via amendment at the hearing, that Hunley threatened employees with plant closure in October 2017.

Alternative Energy Applications, Inc., 361 NLRB 1203, 1205 (2014). If the General Counsel meets the initial burden, the burden shifts to the employer to prove that it would have taken the adverse action even in the absence of the employee's protected activity. *Mesker Door, Inc.*, 357 NLRB 591, 592 (2011); *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 961 (2004). The employer cannot meet its burden merely by showing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct. *Bruce Packing Co.*, 357 NLRB 1084, 1086 (2011); *Roure Bertrand Dupont, Inc.*, 271 NLRB 443, 443 (1984). If the evidence establishes that the reasons given for the employer's action are pretextual–that is, either false or not in fact relied upon–the employer fails by definition to show that it would have taken the same action for those reasons, and its *Wright Line* defense necessarily fails. *Libertyville Toyota*, 360 NLRB 1298, 1301 (2014); *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003).

As to the first element of the General Counsel's initial burden, the record evidence establishes, and the Respondent does not contest, that Adams, Davis, and Robbins engaged in union activity. From the start of the Union's organizing campaign at the end of June, Davis was a participant. He met with union representatives on the evening after their first handbilling at the Respondent's facility. Thereafter, he maintained contact with those representatives. He also spoke repeatedly to his coworkers about having the Union represent them. Following their hires, both Adams and Robbins also spoke to employees repeatedly about unionizing. The discussions culminated in the October 18 meeting between Kurek, Adams, Davis, and Robbins. At that meeting, all three signed authorizations cards, the first definitive step towards obtaining a Board election. In the limited time period in which they remained employed after the meeting, Adams, Davis, and Robbins sought, inside the fabrication shop, other employee signatures on authorization cards.

For the moment, I will defer consideration of the knowledge element and instead address whether the evidence establishes the Respondent's animus to the union activity of Adams, Davis, and Robbins. Animus can be demonstrated by direct evidence or inferred from the totality of the circumstances. *Fluor Daniel, Inc.*, 311 NLRB 498, 498 (1993). A discriminatory motive may be established by a variety of circumstantial factors, including the timing of the employer's adverse action in relationship to the employee's protected activity, the presence of other unfair labor practices, and whether the asserted reasons for the adverse action are a pretext. *Shambaugh and Son, L.P.*, 364 NLRB No. 26, slip op. at 1 fn. 1 (2016); *Lucky Cab Co.*, 360 NLRB 271, 274 (2014). Pretext may be shown by various factors, including asserting false reasons for an adverse action, the failure to follow progressive disciplinary procedures, and shifting explanations for the adverse action. *Aliante Casino*, 364 NLRB No. 78, slip op. at 1 (2016); *Affinity Medical Center*, 362 NLRB No. 78, slip op. at 1 fn. 4 (2015); *Windsor Convalescent Center*, 351 NLRB 975, 983–984 (2007), enfd. in relevant part 570 F.3d 354 (D.C. Cir. 2009).

The record evidence here is more than sufficient to demonstrate animus. First and foremost, the timing of the discharges of Adams, Davis, and Robbins strongly suggests a discriminatory motive. On October 18, the three employees met with Kurek, signed authorization cards, and were tasked with obtaining additional signed cards from other

employees. They began those efforts the very next workday. Two days after the meeting, the Respondent discharged Adams and, 5 days later, it discharged Davis and Robbins. This proximity in time between protected activity and adverse action raises a powerful inference of animus. See, e.g., *Masland Industries*, 311 NLRB 184, 197 (1993) (discharges occurring 4 days after employer's receipt of union recognition demand letter indicative of animus); *NLRB v. Rain-Ware, Inc.*, 732 F.2d 1349, 1354 (7th Cir. 1984) (layoff of four employees on the 2 days following receipt of a union recognition demand letter sufficient, standing alone, to establish the General Counsel's initial animus burden). Second, after learning of the Union's intent to organize its employees at the end of June, the Respondent committed four separate violations of Section 8(a)(1). They included Hunley's threats of plant closure to employees on June 29 and at the end of September; Cress advising Rouse and Williamson that the Respondent did not hire union applicants on September 17; and Andres interrogating Robbins regarding his union membership on October 2. The presence of these other unfair labor practices further supports a finding that the Respondent harbored animus towards the employees' organizing activity. *Lucky Cab Co.*, 360 NLRB at 274; *ManorCare Health Services – Easton*, 356 NLRB 202, 204 (2010). The timing of the discharges and the numerous violations of Section 8(a)(1) are sufficient, standing alone, to establish the General Counsel's initial burden. *Masland Industries*, supra; *NLRB v. Rain-Ware, Inc.*, supra.

The crowning stroke on animus is the pretextual reasons given for the discharges. As described above, I do not credit Andres' testimony that he had reasonable cause to drug test Davis and Robbins, then discharged them for refusing to take the test. I likewise do not credit Andres' testimony that he discharged Adams due to absenteeism and poor performance. Beyond credibility, this pretext finding is supported by other factors. As to Adams, the Respondent failed to follow its progressive disciplinary policy before discharging him. The employee handbook provides for verbal counseling, a written reprimand, and an unpaid suspension prior to discharge. At most, Hunley verbally counseled Adams a couple of times about semiautomatic welds, but not about any other aspect of his job performance. Nor did he ever confront Adams about his absenteeism. Andres never issued Adams any written discipline or suspended him. The handbook also states that employees will "always" be given the opportunity to explain their position regarding the alleged problem, which the Respondent likewise did not do. This conduct is a telltale sign of pretext. *Aliante Casino & Hotel*, 364 NLRB No. 78, slip op. at 11 (failure to follow disciplinary policy and to document alleged incidents of discourteous behavior by employee evidenced pretext); *Cora Realty Co., LLC*, 340 NLRB 366, 371 (2003) (giving employee only one oral warning prior to discharge demonstrated that employer was not, as it claimed, seriously concerned with employee's work performance). As to Davis and Robbins, Andres offered shifting explanations at the hearing regarding his justification for discharging them. Such explanations further cement the pretext finding. *Lucky Cab Co.*, 360 NLRB at 274; *Inter-Disciplinary Advantage, Inc.*, 349 NLRB 480, 509 (2007).

As a result, I conclude that the Respondent did not discharge Davis and Robbins for using marijuana and refusing to take a drug test. *Astro Shapes, Inc.*, 317 NLRB 1132, 1134–1135 (1995) (employer's claim that three employees were discharged for marijuana use was pretextual, where supervisor failed to immediately confront them about alleged use and instead

allowed them to continue performing dangerous metal cutting machine work); *Starbrite Furniture Corp.*, 226 NLRB 507, 509 (1976) (employer's assertion that employee was discharged for smoking marijuana during work hours was pretextual, where supervisor provided inconsistent dates as to when he caught employee using drugs and discharge occurred 1 day after employee's distribution of authorization cards). I likewise find that, when Andres decided to terminate Adams, it was not due to Adams' absenteeism and work performance. *Stoody Co.*, 312 NLRB 1175, 1182–1183 (1993) (attendance and poor performance justifications for discharge were pretextual, where employer failed to contemporaneously document the issues or to follow its progressive disciplinary policies). Thus, the General Counsel has met his initial *Wright Line* burden. Because the asserted justifications are pretextual, the Respondent's *Wright Line* defense necessarily fails and no shifting burden analysis need be conducted. *Airgas USA, LLC*, 366 NLRB No. 104, slip op. at 1 fn. 2 (2018).

Finally, against this backdrop, the Respondent's knowledge of the three employees' union activity is appropriately inferred. Such an inference can be made from an employer's general knowledge of union activity; its demonstrated antiunion animus; the timing of its actions against the employees who engaged in the conduct; and the pretextual nature of its defenses. See, e.g., *Coastal Sunbelt Produce, Inc.*, 362 NLRB No. 126, slip op. at 2–3 (2015); *Glasforms, Inc.*, 339 NLRB 1108, 1110 fn. 6 (2003). All of these elements are present here. The Respondent admittedly had general knowledge of union activity, because Andres and Hunley saw the handbilling and spoke to the union representatives in June and July. Moreover, the record evidence establishes at least some direct knowledge of employees' union activity. Hunley overheard Adams and Davis when they were speaking glowingly about union wages at the New Albany shop. It also appears that employee Dustin Partridge, who opposed unionization, was providing information to Andres about other employees' union activity. For certain, Partridge told Andres in June about the Union talking to employees at the nearby gas station. Then, shortly after the October meeting between Kurek, Adams, Davis, and Robbins, Partridge sought out Robbins and seemingly was fishing for information about his union activities. As described above, the Respondent harbored significant animus towards the plant becoming unionized. At all turns in the 5 months since the first union handbilling, the Respondent made clear to employees and job applicants that the Pekin facility was to remain nonunion. The timing of the discharges is highly suspect. And the Respondent did not discharge the three employees for the reasons it has asserted. As a result, the knowledge element of the General Counsel's initial burden likewise has been met.[33]

Accordingly, the Respondent's discharges of Adams, Davis, and Robbins violate Section 8(a)(3).[34]

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[33] In reaching this conclusion, I do not rely on the Board's small plant doctrine. See generally *La Gloria Oil & Gas Co.*, 337 NLRB 1120 (2002).

[34] As discussed above, I found the Respondent's asserted justifications to establish reasonable cause for drug testing the employees to be false and thus pretextual. Therefore, and combining that finding with my legal conclusions regarding union activity, knowledge, and animus, I likewise find Andres' demand that Davis and Robbins be drug tested on October 27 violated Section 8(a)(3).

CONCLUSIONS OF LAW

1. The Respondent, Globe Industries LLC, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Indiana State Pipe Trades Association and U.A. Local 502, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by:

   (a) On or about June 29, 2017, and again at the end of September 2017, threatening employees with plant closure if the employees selected the Union as their collective-bargaining representative;

   (b) On or about September 19, 2017, informing job applicants that the Respondent does not hire union applicants;

   (c) On or about October 2, interrogating job applicants about their union membership.

4. The Respondent violated Section 8(a)(3) of the Act by:

   (a) On October 20, 2017, discharging Nathan Adams because of his union activity;

   (b) On October 27, 2017, requiring Ralph Davis and Dale Robbins to submit to a drug test; and

   (c) On October 27, 2017, discharging Ralph Davis and Dale Robbins because of their union activity.

5. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. The Respondent has not violated the Act in the other manners alleged in the complaint.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular and to remedy the unlawful discharges of Adams, Davis, and Robbins, I shall order the Respondent to offer the three employees full reinstatement to their former positions or, if the positions no longer exist, to substantially equivalent positions,

without prejudice to seniority or other rights and privileges the employees previously enjoyed, and to make Adams, Davis, and Robbins whole for any loss of earnings and other benefits attributable to the unlawful conduct. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *Tortillas Don Chavas*, 361 NLRB 101 (2014), the Respondent shall compensate Adams, Davis, and Robbins for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), the Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 25 a report allocating the employees' backpay to the appropriate calendar years for each employee. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. The Respondent also shall be required to remove from its files any and all references to its unlawful discharges of Adams, Davis, and Robbins, as well as the unlawful requirement that Davis and Robbins submit to a drug test, and to notify the employees in writing that this has been done and these actions will not be used against them in any way.[35]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[36]

ORDER

The Respondent, Globe Industries LLC, Pekin, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

   (a) Threatening employees with plant closure, if the employees chose to be represented by a union.

   (b) Informing job applicants that it does not hire union applicants.

   (c) Interrogating job applicants concerning their union membership, activities, and sympathies;

   (d) Requiring employees to submit to a drug test, due to their union activity;

[35] The Charging Party requests the special remedies of notice reading and restoration of its access to the Respondent's facility as it existed in June and July 2017. I find the Board's standard remedies adequate to address the Respondent's violations of the Act and decline the Charging Party's request.

[36] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Discharging employees, due to their union activity.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Nathan Adams, Ralph Davis, and Dale Robbins reinstatement to their former positions or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Nathan Adams, Ralph Davis, and Dale Robbins whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Compensate Nathan Adams, Ralph Davis, and Dale Robbins for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, allocating the backpay award to the appropriate calendar years for each employee.

(d) Within 14 days from the date of this Order, remove from its files any references to the unlawful discharges of Nathan Adams, Ralph Davis, and Dale Robbins and the unlawful requirement that Ralph Davis and Dale Robbins submit to a drug test and, within 3 days thereafter, notify them in writing that this has been done and that these unlawful acts will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Pekin, Indiana facility copies of the attached notice marked "Appendix."[37] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the

[37] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent's authorized representatives, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 29, 2017.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. August 1, 2018

Charles J. Muhl
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with plant closure if you chose to be represented by a union.

WE WILL NOT inform job applicants that we do not hire union applicants.

WE WILL NOT interrogate job applicants about their union membership, sympathies, and activities.

WE WILL NOT require employees to submit to a drug test due to their union activity.

WE WILL NOT discharge employees due to their union activity.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Nathan Adams, Ralph Davis, and Dale Robbins reinstatement to their former positions or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they previously enjoyed.

WE WILL make Nathan Adams, Ralph Davis, and Dale Robbins whole for any loss of earnings and other benefits resulting from their unlawful discharges.

WE WILL compensate Nathan Adams, Ralph Davis, and Dale Robbins for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed,

either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

WE WILL, within 14 days from the date of this Order, remove from our files any references to the unlawful discharges of Nathan Adams, Ralph Davis, and Dale Robbins, as well as the unlawful requirement that Ralph Davis and Dale Robbins submit to a drug test, and WE WILL, within 3 days thereafter, notify them in writing that this had been done and that these unlawful actions will not be used against them in any way.

GLOBE INDUSTRIES LLC

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Minton-Capehart Federal Building
575 N. Pennsylvania Street, Room 238
Indianapolis, IN 46204-1577
(317) 226-7381, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/25-CA-209034 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (317) 226-7413.